



January 24, 2006

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## HOUSE BILL No. 1190

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DIGEST OF HB 1190 (Updated January 20, 2006 9:59 am - DI 14)

**Citations Affected:** IC 7.1-1; IC 7.1-3.

**Synopsis:** Farm winery sales to retailers. Prohibits a farm winery from selling wine directly to the holder of a retailer permit. Redefines "farm winery". Allows a farm winery to sell the winery's wine to consumers by the bottle at a farmers' market that is operated on a not-for-profit basis. Allows a farm winery to offer wine tastings and sell the winery's wine at three locations apart from the winery. Increases to 30 days (from nine days) the amount of time in a calendar year during which a farm winery may participate in a trade show or exposition. Repeals affidavit requirement for a holder of a farm winery permit. Requires that the provisions of the alcohol and tobacco law be strictly construed and that the words used in the law be interpreted according to their literal meanings. Requires wine wholesalers to make provisions to sell wine from farm wineries.

**Effective:** July 1, 2006.

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**Stutzman, Koch**

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January 9, 2006, read first time and referred to Committee on Public Policy and Veterans Affairs.  
January 23, 2006, amended, reported — Do Pass.

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HB 1190—LS 6704/DI 87+



January 24, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## HOUSE BILL No. 1190

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 7.1-1-2-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~Construction:~~ (a)  
3 This title is an exercise of the police powers of the state.

4 (b) The classifications and differentiations made in this title are real  
5 and are actually and substantially related to the accomplishment of the  
6 purposes of this title.

7 (c) The provisions of this title shall be ~~liberally construed so as to~~  
8 ~~effectuate the purposes of this title:~~ **strictly construed. The words**  
9 **used in this title shall be interpreted according to their literal**  
10 **meanings.**

11 (d) **In accordance with IC 1-1-1-8, if any provision of this title**  
12 **is held to be invalid or unconstitutional, it is the intention of the**  
13 **state that the remaining provisions of this title shall be construed**  
14 **to:**

15 (1) **further limit rather than expand commerce in alcoholic**  
16 **beverages; and**

17 (2) **maintain a transparent and accountable three (3) tier**

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1 **system of alcoholic beverage distribution by a person with a**  
 2 **substantial presence in Indiana.**

3 SECTION 2. IC 7.1-1-3-44 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 44. The term "farm  
 5 winery" means a commercial winemaking establishment that produces  
 6 wine ~~from products allowed by~~ **and meets the requirements of**  
 7 IC 7.1-3-12-4.

8 SECTION 3. IC 7.1-3-12-3 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The commission may  
 10 issue a farm winery permit to a person who:

11 (1) is the proprietor of a farm winery; ~~and who~~

12 (2) desires to commercially manufacture wine; and

13 (3) is either:

14 (A) an individual; or

15 (B) a partnership, limited liability company, or  
 16 corporation domiciled in or admitted to do business in  
 17 Indiana.

18 A farm winery permit shall be valid from July 1, of the then current  
 19 year to June 30, of the following year. IC 7.1-3-21-5 does not apply to  
 20 a farm winery permit issued under this chapter. ~~The commission may~~  
 21 ~~not issue a farm winery permit to a person who has not been a~~  
 22 ~~continuous and bona fide resident of Indiana for at least one (1) year~~  
 23 ~~preceding the date of the application for a farm winery permit.~~

24 SECTION 4. IC 7.1-3-12-4 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) In order to be  
 26 considered a "farm winery" within the meaning of this title and to be  
 27 eligible to receive a farm winery permit, a wine-making establishment  
 28 ~~(1) must produce wine from grapes, other fruits, or honey~~  
 29 ~~produced in this state; and~~  
 30 ~~(2) shall not annually produce more than five hundred thousand~~  
 31 ~~(500,000) gallons of wine.~~

32 (b) Table wine that is shipped by the winery outside the state and  
 33 that involves a change of ownership may not be considered as part of  
 34 the winery's annual production for purposes of subsection ~~(a)(2): (a).~~

35 SECTION 5. IC 7.1-3-12-5, AS AMENDED BY P.L.224-2005,  
 36 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2006]: Sec. 5. (a) The holder of a farm winery permit:

38 (1) is entitled to manufacture wine and to bottle wine produced by  
 39 the permit holder's farm winery;

40 (2) is entitled to serve complimentary samples of the winery's  
 41 wine on the licensed premises;

42 (3) is entitled to sell the winery's wine on the licensed premises to

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consumers either by the glass, or by the bottle, or both;

**(4) is entitled to sell the winery's wine to consumers by the bottle at a farmers' market that is operated on a nonprofit basis;**

~~(4)~~ **(5)** is entitled to sell wine by the bottle or by the case to a person who is the holder of a permit to sell wine at ~~either~~ wholesale; ~~or retail~~;

~~(5)~~ **(6)** is exempt from the provisions of IC 7.1-3-14;

~~(6)~~ **(7)** is entitled to advertise the name and address of any retailer or dealer who sells wine produced by the permit holder's winery;

~~(7)~~ **(8)** for wine described in IC 7.1-1-2-3(a)(4):

(A) may allow transportation to and consumption of the wine on the licensed premises; and

(B) may not sell, offer to sell, or allow the sale of the wine on the licensed premises;

~~(8)~~ **(9)** is entitled to purchase and sell bulk wine as set forth in this chapter; ~~and~~

~~(9)~~ **(10)** is entitled to sell wine as authorized by this section for carryout on Sunday; ~~and~~

**(11) is entitled to sell and ship the farm winery's wine to a person located in another state in accordance with the laws of the other state.**

(b) With the approval of the commission, a holder of a permit under this chapter may conduct business at ~~a second location~~ **not more than three (3) additional locations** that ~~is~~ **are** separate from the winery. At the ~~second location~~; **additional locations**, the holder of a permit may conduct any business that is authorized at the first location, except for the manufacturing or bottling of wine.

(c) With the approval of the commission, a holder of a permit under this chapter may, individually or with other permit holders under this chapter, participate in a trade show or an exposition at which products of each permit holder participant are displayed, promoted, and sold. The commission may not grant approval under this subsection to a holder of a permit under this chapter for more than ~~nine (9)~~ **thirty (30)** days in a calendar year.

SECTION 6. IC 7.1-3-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) **Subject to subsection (c)**, the commission may issue a wine wholesaler's permit to sell wine, or wine and brandy, at wholesale to a person who:

(1) notwithstanding IC 7.1-5-9-4, holds a beer wholesaler's permit;

(2) holds a liquor wholesaler's permit; or

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(3) does not hold an alcoholic beverage wholesaler's permit, but meets the qualifications to hold either a beer or a liquor wholesaler's permit.

(b) The holder of a wine wholesaler's permit under subsection (a)(1) or (a)(2):

(1) is considered the same as a person who holds a wine wholesaler's permit under subsection (a)(3) for purposes of conducting activities and operations under the wine wholesaler's permit; and

(2) may operate the beer or liquor wholesale business independently of the wine wholesale business.

**(c) After June 30, 2006, the commission may issue a wine wholesaler's permit or renew a wine wholesaler's permit only if the applicant for the permit or renewal permit:**

**(1) consents to pick up shipments from a farm winery for delivery to a retailer for a consumer who has ordered the wine from the farm winery; and**

**(2) agrees to pick up wine from a farm winery under the following conditions:**

**(A) makes the pickup on the premises of the farm winery or accept shipment from the farm winery;**

**(B) makes the pick up not later than two (2) business days after the farm winery makes the request for the pickup; and**

**(C) delivers the wine to the package liquor store not more than five (5) business days after the date on which the wine is picked up for delivery.**

**(d) The holder of a wholesaler's permit under this section may charge a farm winery:**

**(1) all costs associated with a transaction described in subsection (c); and**

**(2) a fee to be set by the commission that may not be less than two dollars (\$2) per bottle or four dollars (\$4) per case of wine delivered.**

**(e) The package liquor store that receives the wine from the wholesaler under subsection (c) may charge the consumer a fee not to exceed two dollars (\$2) per bottle or four dollars (\$4) per case of wine.**

**(f) If there is a dispute between a farm winery and a wholesale permit holder under this section, either party may submit the dispute to the commission to be decided under IC 4-21.5.**

SECTION 7. IC 7.1-3-12-6 IS REPEALED [EFFECTIVE JULY 1,

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HB 1190—LS 6704/DI 87+



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy and Veterans Affairs, to which was referred House Bill 1190, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 7.1-1-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~Construction.~~ (a) This title is an exercise of the police powers of the state.

(b) The classifications and differentiations made in this title are real and are actually and substantially related to the accomplishment of the purposes of this title.

(c) The provisions of this title shall be ~~liberally construed so as to effectuate the purposes of this title:~~ **strictly construed. The words used in this title shall be interpreted according to their literal meanings.**

(d) **In accordance with IC 1-1-1-8, if any provision of this title is held to be invalid or unconstitutional, it is the intention of the state that the remaining provisions of this title shall be construed to:**

- (1) **further limit rather than expand commerce in alcoholic beverages; and**
- (2) **maintain a transparent and accountable three (3) tier system of alcoholic beverage distribution by a person with a substantial presence in Indiana.**

SECTION 2. IC 7.1-1-3-44 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 44. The term "farm winery" means a commercial winemaking establishment that produces wine ~~from products allowed by and meets the requirements of~~ IC 7.1-3-12-4.

SECTION 3. IC 7.1-3-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The commission may issue a farm winery permit to a person who:

- (1) is the proprietor of a farm winery; ~~and who~~
- (2) desires to commercially manufacture wine; and
- (3) **is either:**
  - (A) **an individual; or**
  - (B) **a partnership, limited liability company, or corporation domiciled in or admitted to do business in Indiana.**

A farm winery permit shall be valid from July 1, of the then current

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year to June 30, of the following year. IC 7.1-3-21-5 does not apply to a farm winery permit issued under this chapter. ~~The commission may not issue a farm winery permit to a person who has not been a continuous and bona fide resident of Indiana for at least one (1) year preceding the date of the application for a farm winery permit.~~

SECTION 4. IC 7.1-3-12-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) In order to be considered a "farm winery" within the meaning of this title and to be eligible to receive a farm winery permit, a wine-making establishment

~~(1) must produce wine from grapes, other fruits, or honey produced in this state; and~~

~~(2) shall not annually produce more than five hundred thousand (500,000) gallons of wine.~~

(b) Table wine that is shipped by the winery outside the state and that involves a change of ownership may not be considered as part of the winery's annual production for purposes of subsection ~~(a)(2): (a).~~

Page 1, between lines 9 and 10, begin a new line block indented and insert:

**"(4) is entitled to sell the winery's wine to consumers by the bottle at a farmers' market that is operated on a nonprofit basis;"**

Page 1, line 10, strike "(4)" and insert **"(5)"**.

Page 1, line 13, strike "(5)" and insert **"(6)"**.

Page 1, line 14, strike "(6)" and insert **"(7)"**.

Page 1, line 16, strike "(7)" and insert **"(8)"**.

Page 2, line 4, strike "(8)" and insert **"(9)"**.

Page 2, line 5, strike "and".

Page 2, line 6, strike "(9)" and insert **"(10)"**.

Page 2, line 7, after "Sunday" delete "." and insert **"; and"**.

Page 2, between lines 7 and 8, begin a new line block indented and insert:

**"(11) is entitled to sell and ship the farm winery's wine to a person located in another state in accordance with the laws of the other state."**

Page 2, line 9, strike "a second location" and insert **"not more than three (3) additional locations"**.

Page 2, line 9, strike "is" and insert **"are"**.

Page 2, line 10, strike "second location," and insert **"additional locations,"**.

Page 2, line 18, strike "nine (9)" and insert **"thirty (30)"**.

Page 2, after line 19, begin a new paragraph and insert:

**"SECTION 6. IC 7.1-3-13-1 IS AMENDED TO READ AS**

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FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) **Subject to subsection (c)**, the commission may issue a wine wholesaler's permit to sell wine, or wine and brandy, at wholesale to a person who:

- (1) notwithstanding IC 7.1-5-9-4, holds a beer wholesaler's permit;
- (2) holds a liquor wholesaler's permit; or
- (3) does not hold an alcoholic beverage wholesaler's permit, but meets the qualifications to hold either a beer or a liquor wholesaler's permit.

(b) The holder of a wine wholesaler's permit under subsection (a)(1) or (a)(2):

- (1) is considered the same as a person who holds a wine wholesaler's permit under subsection (a)(3) for purposes of conducting activities and operations under the wine wholesaler's permit; and
- (2) may operate the beer or liquor wholesale business independently of the wine wholesale business.

**(c) After June 30, 2006, the commission may issue a wine wholesaler's permit or renew a wine wholesaler's permit only if the applicant for the permit or renewal permit:**

- (1) consents to pick up shipments from a farm winery for delivery to a retailer for a consumer who has ordered the wine from the farm winery; and**
- (2) agrees to pick up wine from a farm winery under the following conditions:**

- (A) makes the pickup on the premises of the farm winery or accept shipment from the farm winery;**
- (B) makes the pick up not later than two (2) business days after the farm winery makes the request for the pickup; and**
- (C) delivers the wine to the package liquor store not more than five (5) business days after the date on which the wine is picked up for delivery.**

**(d) The holder of a wholesaler's permit under this section may charge a farm winery:**

- (1) all costs associated with a transaction described in subsection (c); and**
- (2) a fee to be set by the commission that may not be less than two dollars (\$2) per bottle or four dollars (\$4) per case of wine delivered.**

**(e) The package liquor store that receives the wine from the wholesaler under subsection (c) may charge the consumer a fee not**

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to exceed two dollars (\$2) per bottle or four dollars (\$4) per case of wine.

**(f) If there is a dispute between a farm winery and a wholesale permit holder under this section, either party may submit the dispute to the commission to be decided under IC 4-21.5.**

SECTION 7. IC 7.1-3-12-6 IS REPEALED [EFFECTIVE JULY 1, 2006]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1190 as introduced.)

STUTZMAN, Chair

Committee Vote: yeas 11, nays 0.

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